United Paperworkers International Union, AFL–CIO and Local 224, United Paperworkers International Union, AFL–CIO and Graphic Communications International Union, AFL–CIO and Local 370-C, Graphic Communications International Union, AFL–CIO *and* James River Corporation. Case 30–CD–157

March 14, 1995

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

The charge in this Section 10(k) proceeding was filed on October 28, 1994, by the Employer, James River Corporation (the Employer or James River), alleging that the Respondents, Graphic Communications International Union, AFL–CIO (GCIU) and Local 370-C, Graphic Communications International Union, AFL–CIO (Local 370-C), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees they represent rather than to employees represented by United Paperworkers International Union, AFL–CIO (UPIU) and Local 224, United Paperworkers International Union, AFL–CIO (Local 224).[1] The hearing was held on November 22 and 23, 1994, before Hearing Officer Robert L. Blackowicz.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error.[2] On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a Virginia corporation, is engaged in the business of producing paper products. The Employer annually ships goods valued in excess of $50,000 from its facility located at 200 West Bridge Road, Wausau, Wisconsin, directly to customers located outside the State of Wisconsin. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that GCIU, Local 370-C, UPIU, and Local 224 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

In fall 1993, the Employer purchased five narrow web in-line flexographic press systems (Flexos) for its Wausau, Wisconsin facility. Installation was to take place in December 1994. Until the Flexos became operational, the Employer utilized a multistep, sheet-fed process for producing printed cartons, which included cutting rolls of paperboard into sheets, stacking the sheets on pallets, transporting the sheets to the lithographic printing press, printing the sheets, stacking the printed sheets on pallets, and transporting the sheets to a different area of the facility for cutting, stripping, and gluing. Prior to operating the Flexopress system, UPIU-represented employees were responsible for cutting, stacking, and transporting lithographic sheets to GCIU-represented employees for printing. After the sheets were printed, UPIU-represented employees moved the sheets to another area for cutting, stripping, and gluing.

The Flexo is a state-of-the-art printing system that combines high quality graphic printing with a continuous on-line drying, cutting, and stripping process. The Flexo has eight color printing decks, permitting the Employer to produce eight-color printing. The Flexo allows the Employer to produce cartons using process printing so that the four process colors, cyan, magenta, yellow, and black, are printed one on top of the other to produce a multitude of colors on the same carton.

The Employer has local and multilocation collective-bargaining agreements with both the GCIU and the UPIU. On November 18, 1993, Dennis Hadley, the Employer's director of human resources for packaging, met with Local 224 and Local 370-C representatives. He informed them that James River planned to purchase five Flexos. Hadley stated that although no decisions had yet been made as to staffing, the Employer envisioned starting the operation with four persons per

[1] The UPIU and Local 224 are named as charged parties in the charge and notice of hearing. However, no party contends that either the UPIU or Local 224 engaged in any activity in violation of Sec. 8(b)(4)(D). Therefore, we find that the only unions which are alleged to have engaged in proscribed activity are the GCIU and its Local 370-C.

[2] The UPIU asserts, for the first time in its brief to the Board, that the Regional Director improperly assigned the same person to investigate the charge and to conduct the hearing. The UPIU cites sec. 10210.5 of the Board's Casehandling Manual for Unfair Labor Practice Proceedings which states, in relevant part, that ''[t]he hearing officer [in a 10(k) proceeding] should not be the same person who investigated the charge.'' We reject the UPIU's argument. First, the proper time for raising that contention was prior to the start of hearing. Second, it is well established that the provisions of the Board's Casehandling Manual are guidelines and not binding rules. See, e.g., *Embassy Suites Hotel*, 313 NLRB 302 (1993). Finally, the UPIU has presented no evidence indicating that the assignment was prejudicial.

press per shift. He suggested that each Flexo be operated by two from Local 370-C and two by Local 224. Hadley stressed the need for total flexibility of skills and responsibility. He indicated that it was necessary that employees working on the Flexo possess the skills needed to operate all aspects of the system. James River would provide the requisite training.

The GCIU was open to Hadley's two/two proposal; however, the UPIU stated that the proposal was unacceptable. It asserted that the Flexo should be assigned to three Local 224 members and one Local 370-C member and that the work assignments should remain separate.

The Employer met with Local 224 and Local 370-C representatives at various times in December 1993. During these meetings Local 224 maintained that jurisdiction for operating the Flexo should be split between three Local 224 members and one Local 370-C member, with Local 224 performing all the cutting work.[3] At first Local 370-C remained amenable to the two/two split; however, at the last meeting in December, Local 370-C, relying on its collective-bargaining agreement, stated that it had sole jurisdiction over the work and that a two/two split was no longer acceptable.

On March 11, l994,[4] James River awarded all the work on the Flexo to employees represented by Local 370-C. On March 14, James River received a grievance filed by Local 224 requesting that in light of its contract with the Employer, ''members of Local 224 be considered for jobs on the new flexo presses.'' On May 13, James River denied the grievance. On June 27, Local 224 informed the Employer that the grievance had been submitted to arbitration. On September 12, James River contacted Local 370-C and asked what its position would be if James River acceded to Local 224's request for arbitration and/or adhered to an award of an arbitrator that granted total or partial jurisdiction of the Flexo to Local 224. On October 14, Local 370-C responded by letter which states in part that:

> the GCIU will take all economic action necessary, including a strike to protect its jurisdiction . . . [and that] such action will not be limited solely to the Wassau [sic] Plant, but will involve some or all of the other James River [sic] Plants where the GCIU has representation.''

B. *Work in Dispute*

The disputed work involves the operation of the Employer's narrow web in-line flexographic press systems at its Wausau, Wisconsin plant.

C. *Contentions of the Parties*

The Employer and Local 370-C contend that the disputed work should be awarded to the employees represented by Local 370-C on the basis of the collective-bargaining agreements, relative skills, area practice, and economy and efficiency of operation. James River additionally relies on the factor of employer preference in arguing that Local 370-C-represented employees should be assigned the disputed work.

Local 224 contends that the instant dispute is not jurisdictional but representational, and concerns new technology and classifications which should be resolved through arbitration or the Board's unit clarification procedure. Local 224 also contends that there is not reasonable cause to believe Section 8(b)(4)(D) has been violated because the statements made by the GCIU were not genuine threats. Local 224 asserts that in the event the Board decides this jurisdictional dispute, the work should be awarded to a composite crew of employees represented by both Local 224 and Local 370-C on the basis of employer's practice, job loss, and traditional job division.

D. *Applicability of the Statute*

As noted above, the GCIU threatened to strike if the Employer submitted the assignment to arbitration or entered into any settlement or adhered to an award granting Local 224 jurisdiction over work on the Flexo. Local 224 contends that the GCIU's threat to strike was not a threat within the meaning of Section 8(b)(4)(D), because the threat resulted from collusion between the Employer and Local 370-C, and because Local 370-C had no intention of carrying out its threat. We find no merit in Local 224's contention. The Employer assigned the Flexo work jurisdiction to employees represented by Local 370-C before Local 224 filed its grievance and announced its intention to seek arbitration. In these circumstances, the Employer's call to Local 370-C to discern its intentions if the Employer proceeded to arbitration was in the Employer's economic interest and was not indicative of collusion. The GCIU's threat to ''take all economic action necessary, including a strike to protect its jurisdiction,'' provides reasonable cause to believe Section 8(b)(4)(D) has been violated. See, e.g., *Mine Workers (Energy West)*, 304 NLRB 107, 108–109 (1991). Further, contrary to Local 224's claim, there is no evidence that the GCIU was not serious when making this threat. *Graphic Communications (Bowne of Boston)*, 295 NLRB 32, 33 fn. 4 (1989). Further, the parties stipulated that they have not agreed on voluntary method to adjust this dispute.

The UPIU contends that the dispute is not one of competing claims for the work, but is rather a dispute over which union will represent these employees. We cannot agree. The dispute here involves who will be

[3] In late December 1993, the UPIU's new president indicated that his union might be agreeable to a two/two split, but not to total flexibility in assignments proposed by the Employer.

[4] All subsequent dates are in 1994 unless otherwise stated.

assigned the work, not just who will represent these employees.

Accordingly, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment, based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certification(s) and collective-bargaining agreements

No party claims that there are certifications applicable to the work in dispute.

The Employer has collective-bargaining agreements with both the GCIU and the UPIU as well as local agreements with Local 370-C and Local 224. The UPIU agreements state that Local 224 is the sole bargaining agent for the Employer's production and maintenance employees. The GCIU contract specifically states that the GCIU has jurisdiction over ''all . . . flexographic . . . printing presses.'' Because the GCIU has a collective-bargaining agreement specifically covering the disputed work, we find this factor favors awarding the work to the employees represented by it.

2. Relative skills

The GCIU-represented employees, with 3 to 4 weeks' training, will have the skills to operate the entire flexographic press system. Although UPIU-represented employees may be able to perform certain work on the press, they would require at least 2 to 3 years' training before they could operate the Flexo effectively. We find, therefore, that this factor favors awarding the work to the employees represented by the GCIU. *Graphic Communications (Bowne of Boston)*, supra.

3. Area practice

The evidence is too limited to determine with certainty whether an area practice exists for assigning the work in dispute to a particular group of employees.

4. Employer preference

The Employer has assigned the work to employees represented by the GCIU and prefers that assignment. Accordingly, we find this factor favors awarding the disputed work to the employees represented by the GCIU.

5. Economy and efficiency

As noted above, GCIU-represented employees will have the skills necessary to operate the entire system after 3 to 4 weeks of training. UPIU-represented employees would require 2 to 3 years' training before they could operate the press effectively. Although UPIU-represented employees could perform certain jobs with less training, since they could not perform the remaining jobs, the Employer would have less flexibility. The factor of economy and efficiency favors awarding the work to GCIU-represented employees.

6. Job loss

The UPIU asserts that its bargaining unit will lose at least 50 positions if the Flexo-press work is assigned to employees represented by the GCIU. The Employer acknowledges that the Flexo press will reduce manhours and result in the loss of approximately 21 positions by December 1995. However, the Employer contends that this loss is less than its customary attrition, so that no current jobs should be lost. Because the evidence does not clearly establish that awarding the work to GCIU-represented employees will result in job loss to employees represented by the UPIU, we find that this factor does not favor either group of employees.

7. Employer practice

The Employer does use composite crews on its other presses. The operation of those presses significantly differs from the operation of the Flexo. Thus, the Employer's other presses are not as complex as the Flexo, nor do they integrate into a single process all aspects of the printing and production process. Therefore, we find the assignments are not relevant to the resolution of the dispute here.

There is some evidence that the Employer has a narrow web press at another plant and that it uses a three-man composite crew to operate this press. The record contains no further description of this press, however, and no evidence that it is the same as the presses involved in the dispute here. Assuming arguendo that the Employer's assignment at the other plant would tend to favor the composite crew urged by the UPIU, this factor would not be sufficient to outweigh the factors which favor assignment to the employees represented by the GCIU.

Conclusion

After considering all the relevant factors, we conclude that employees represented by the GCIU are entitled to perform the work in dispute. We reach this conclusion relying on collective-bargaining agreements, relative skills, employer preference, and economy and efficiency of operation.

In making this determination, we are awarding the work to employees represented by the GCIU, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees represented by Graphic Communications International Union, AFL–CIO and Local 370-C, Graphic Communications International Union, AFL–CIO are entitled to perform the work required with respect to operating the narrow web in-line flexographic press system at James River Corporation's facility in Wausau, Wisconsin.